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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

JAN 16 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Promotion of Competitive Networks)	
in Local Telecommunications Markets)	WT Docket No. 99-217
)	
Wireless Communications Association)	
International, Inc. Petition for Rulemaking)	
to Amend Section 1.4000 of the Commission's)	
Rules to Preempt Restrictions on Subscriber)	
Premises Reception or Transmission Antennas)	
Designed to Provide Fixed Wireless Services)	
)	
Cellular Telecommunications Industry)	
Association Petition for Rule Making and)	
Amendment of the Commission's Rules)	
to Preempt State and Local Imposition of)	
Discriminatory and/or Excessive Taxes)	
and Assessments)	
)	
Implementation of the Local Competition)	
Provisions in the Telecommunications Act)	CC Docket No. <u>96-98</u>
of 1996)	

OPPOSITION TO MOTION FOR STAY

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits this Opposition to the Motion for Stay ("Motion") filed by the Real Access Alliance ("RAA") in the above-captioned proceeding.^{1/} The RAA seeks to stay the effectiveness of the Federal Communications Commission's ("Commission's") new rule extending the existing protections granted to over-the-air-reception-devices ("OTARD") used to receive video programming to

^{1/} Real Access Alliance Motion for Stay, Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217 (filed Jan. 8, 2001) ("Motion").

devices used to receive and transmit fixed wireless signals.^{2/} To justify the grant of a stay, the petitioner must demonstrate: (1) that it likely to succeed on the merits of its appeal; (2) that it would be irreparably harmed absent the stay; (3) that the issuance of a stay will not substantially harm other parties; and (4) that a stay would serve the public interest.^{3/} Because RAA has not satisfied any of these factors, its Motion should be denied.

I. RAA HAS NOT DEMONSTRATED A LIKELIHOOD OF SUCCESS ON THE MERITS

RAA is not likely to succeed on the merits because the Commission had full authority to extend the OTARD rule to fixed wireless devices. RAA's arguments regarding the Commission's authority under Section 207 are misdirected. The Commission does not claim to use Section 207 as the basis for the new rule. Rather, adoption of the new rule is grounded in the agency's general authority to effectuate the provisions and purposes of the Communications Act ("Act").^{4/}

Both the Commission and the courts have long recognized the broad scope of the Commission's authority under Sections 4(i) and 303(r) to further the goals of the Communications Act.^{5/} Congress' clear objective in enacting the Telecommunications Act of 1996 was to promote competition in the local exchange market. Extending the OTARD rules to cover devices used to transmit and receive fixed wireless services will help fulfill that goal by

^{2/} Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217, First Report and Order and Further Notice of Proposed Rulemaking, FCC 00-366 at ¶¶ 97-124 (rel. Oct. 25, 2000) ("Order").

^{3/} Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

^{4/} Order at ¶ 105-06 (citing 47 U.S.C. §§ 154(i), 303(r)).

^{5/} Order at n.261 (listing numerous cases upholding the Commission's exercise of general or ancillary authority to achieve statutory goals).

encouraging the deployment of wireless services that can compete with offerings by the incumbent wireline carriers. Potential fixed wireless offerings include advanced services, consistent with Congressional directives.^{6/} Sections 4(i) and 303(r) provide clear authority to extend the OTARD rules to fixed wireless in fulfillment of statutory goals.

II. RAA HAS NOT SHOWN THAT IT WILL SUFFER IRREPARABLE HARM ABSENT A STAY

RAA argues that its members will suffer irreparable harm because of the “potential human health hazards of RF radiation” from fixed wireless devices and the “enormous expenditures for hazard prevention . . . and hazard insurance” that building owners will be required to incur to protect themselves against this risk.^{7/} However, neither of these allegations rises to the level of irreparable harm. To obtain a preliminary injunction, “the injury must be both certain and great; it must be actual and not theoretical.”^{8/} The petitioner “must show that ‘[t]he injury complained of [is] of such *imminence* that there is a ‘clear and present’ need for equitable relief to prevent irreparable harm.”^{9/}

RAA’s concerns about radiofrequency (“RF”) emissions are without merit. All FCC-regulated transmitters must meet the applicable RF guidelines, and fixed wireless antennas are no exception.^{10/} In extending the OTARD rule, the Commission adopted even more stringent requirements for fixed wireless antennas, including labeling and installation requirements, to

^{6/} 47 U.S.C. § 157 note.

^{7/} Motion at 6.

^{8/} Wisconsin Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985).

^{9/} Id. (citations and internal quotations omitted).

^{10/} The Commission’s RF regulations were recently upheld by the U.S. Court of Appeals for the Second Circuit. Cellular Phone Taskforce v. FCC, 205 F.3d 82 (2d Cir. 2000), cert. denied (U.S. Jan. 8, 2001) (No. 00-393 et al.).

protect users and the public from RF exposure in excess of the Commission's guidelines.^{11/}

There is even a provision in the rules sanctioning additional restrictions on OTARD devices necessary to promote a "clearly defined, legitimate safety objective," as long as such restrictions are applied in a non-discriminatory manner and are no more burdensome than necessary to achieve the articulated objective.^{12/} The Commission also ruled that requirements that fixed wireless transmitting antennas be professionally installed are not prohibited under the OTARD rules applicable to fixed wireless facilities, as they are for video programming receive antennas.^{13/}

Given the clearly adequate protections against harm from RF emissions provided under the Commission's rules, the possibility of harm from extending the OTARD rules to fixed wireless devices is neither actual nor imminent. Furthermore, as RAA itself acknowledges, the extension of the OTARD rules to fixed wireless devices has not yet taken effect and will not for at least three months.^{14/} RAA therefore has failed to demonstrate that it will suffer irreparable harm absent a stay.

^{11/} Order at ¶¶ 118-20.

^{12/} 47 C.F.R. § 1.4000(b)(1).

^{13/} Order at ¶ 119.

^{14/} Promotion of Competitive Networks in Local Telecommunications Markets, 66 Fed. Reg. 2322 (Jan. 11, 2001) (noting that the OTARD rule changes include an information collection requirement that requires OMB approval with comments on the information collection due March 12, 2001).

III. BOTH FIXED WIRELESS CARRIERS AND THE PUBLIC INTEREST WOULD BE HARMED BY THE GRANT OF A STAY

Numerous parties advocated extending the OTARD rule to cover fixed wireless facilities.^{15/} These parties will be significantly harmed by a stay because their ability to provide fixed wireless services will be impaired. This impairment, in turn, will harm the public interest by depriving the public of the benefits of competition contemplated by Congress.

The potential for harm to carriers is far more imminent than the harms alleged by RAA. AT&T, for instance, is currently conducting trials of its fixed wireless service in Dallas. Other parties, such as Sprint and WorldCom, are planning to use fixed wireless services to provide consumers with broadband access.^{16/} Staying the amended OTARD rule could impede these trials and otherwise delay the deployment of service. Such a result is completely at odds with Congress's objective, embodied in the Telecommunications Act of 1996, of fostering competitive alternatives for the delivery of video, voice, and data.

^{15/} Order at ¶ 96, n.244 (listing the numerous parties supporting extension of the rule to include all fixed wireless devices).

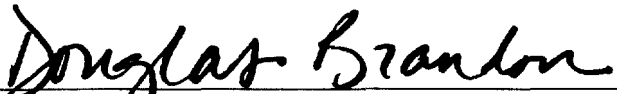
^{16/} Letter from Paul J. Sinderbrand, Counsel for Wireless Communications Association International, Inc., to Magalie Roman Salas, Secretary, FCC, dated September 7, 2000 (discussing carrier plans to deploy fixed wireless broadband services).

CONCLUSION

For the foregoing reasons, the Commission should deny RAA's Motion for Stay.

Respectfully submitted,

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Certificate of Service

I, Angela Collins, hereby certify that on this 16th day of January 2001, copies of AT&T Wireless Services, Inc.'s Opposition to Motion for Stay were sent via hand delivery, to the following:

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